

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>SHARON ANDREW</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 195,804;
<b>BEECH AIRCRAFT CORPORATION</b>	)	201,444; & 206,094
Respondent	)	
Self-Insured	)	

**ORDER**

Claimant appealed the Award entered by Administrative Law Judge John D. Clark dated May 23, 1997. The Appeals Board heard oral argument on December 12, 1997.

**APPEARANCES**

Dale V. Slape of Wichita, Kansas, appeared for claimant. Jeff C. Spahn, Jr., of Wichita, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The Appeals Board considered the record and adopted the stipulations listed in the Award. During oral argument to the Board, the parties agreed that the medical records and reports introduced as exhibits at the December 20, 1994, Motion Hearing and the February 28, 1995, Preliminary Hearing in Docket No. 195,804 and the records of Dr. Paul S. Stein are a part of the record and should be considered by the Board. Also, the ALJ's Award acknowledged that he considered the record for Docket No. 195,804 but the Award bears only Docket Nos. 201,444 and 206,094. The ALJ stated that the claim in Docket No. 195,804 had been abandoned. Claimant amended her claim in Docket No. 206,094 to allege a series of accidents occurring each and every working day through the last day worked, which included the dates of accident alleged in Docket No. 195,804. The Board views docketed claim No. 195,804 as merged into Docket No. 206,094 rather than as abandoned and, therefore, includes Docket No. 195,804 in this Order.

### ISSUES

In Docket No. 201,444 the ALJ denied all benefits finding claimant had not sustained her burden of proving that she suffered any work-related injuries to her low back in December 1994. Claimant appealed that finding. The issues for Appeals Board review in Docket No. 201,444 are: whether claimant suffered personal injury by accident on the date alleged; whether claimant's accidental injuries arose out of and in the course of her employment with respondent; and the nature and extent of claimant's disability.

In Docket No. 206,094, the ALJ stated that it was impossible "to sort out any evidence as it relates to injuries suffered through June 14, 1995." All benefits were again denied. Claimant seeks Appeals Board review of all the issues that were before the ALJ, namely: (1) Whether claimant suffered personal injury on the date of the alleged accident; (2) Whether claimant's alleged accidental injuries arose out of and in the course of employment; (3) Whether notice was received; (4) Nature and extent of claimant's disability, if any; and (5) Whether claimant is entitled to medical, unauthorized and future.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant experienced a recurrence of her left upper extremity and neck problems in October 1994 from "pulling them gigantic groups and harnesses" at work. Her symptoms worsened until she was placed in a lighter duty job in the wiring department in November 1994. Claimant described her symptoms as similar to the problem she experienced in 1993 for which she was treated by Dr. Michael P. Estivo. Afterwards, she had returned to her same job despite the work restrictions given to her by Dr. Estivo.

Claimant first saw Dr. Estivo on June 24, 1993. He ordered an MRI test that revealed a herniated disc at C5-6. (Dr. Robert Rawcliffe, however, questioned this finding.) In September 1993, Dr. Estivo performed manipulation of claimant's cervical spine under anesthesia. He gave her restrictions of no heavy lifting or strenuous activities. Claimant returned to Dr. Estivo in October 1993. At that time her condition was basically unchanged. But she told the doctor that because her father was having surgery she would have to put off further treatment. She did not see Dr. Estivo again until October 1994. At that time she stated to the doctor that she had experienced a recurrence of neck pain over the past few months but did not relate any specific accident or injury.

In Docket No. 206,094, claimant is alleging a repetitive trauma injury through her last day worked on June 14, 1995. She does not allege any specific traumatic incident as the cause of her neck injury. According to claimant, she missed about six days of work at various times during 1993 and 1994 because of her neck. Claimant stated that she did not fill out an incident report form claiming a work-related injury because she felt that she would get in trouble if she filed for workers compensation benefits. Nevertheless, the

respondent received a report from Dr. Estivo's office in January 1994 that related claimant's neck and upper extremity symptoms to her work. Claimant also discussed her symptoms with her foreman, Mike Guapo, and her crew chief, Jerry Tate, in October and November 1994. Claimant testified that she described her neck and upper extremity problem as job related and also told them that her symptoms were getting worse. Claimant also had left upper extremity and neck symptoms in August 1992. In 1993 she discussed with her crew chief, Dorothy, that work was aggravating her neck problems and was given lighter work for a time. This was found to be timely notice by the ALJ and the Appeals Board affirmed that finding on appeal of the ALJ's February 27, 1996, preliminary hearing Order and March 21, 1996, Order Nunc Pro Tunc. After reviewing the entire record, the Board finds no reason to change its earlier conclusions. After Dorothy retired, Jerry Tate became claimant's crew chief and Mike Guapo became her supervisor. She did not ask them for accommodated work until after her condition worsened in October and November 1994.

Claimant injured her back in December 1994. This injury is the subject of Docket No. 201,444. She advised her crew chief, Jerry Tate. She then went to the nurses station and filled out an accident report. Respondent did not furnish her with a physician so claimant sought treatment on her own with Dr. Jeanette C. Salone. Claimant was taken off work initially by Dr. Salone and later by Dr. Paul S. Stein. Claimant's last day worked was June 14, 1995. Claimant left work because of her injuries. She had cervical spine fusion surgery by Dr. Stein in November 1995.

Claimant returned to work April 30, 1996, in an accommodated job earning more than she was at the time of her injuries. Therefore, there is no claim for work disability.

The only medical expert whose deposition is in evidence is that of Lawrence R. Blaty, M.D., which was taken on behalf of claimant. He rated claimant's impairment at 14 percent to the body as a whole for the cervical spine injury and 4 percent to the body as a whole for the lower back. He considered both injuries to be work-related aggravations of preexisting degenerative conditions. Although Dr. Blaty opined that 9 percent of the 14 percent impairment to the neck preexisted June 14, 1995, Dr. Blaty did not give an opinion as to what percentage preexisted the period of time claimant alleges she sustained the series of work-related traumas, which is claimant's date of accident in Docket No. 206,094. Dr. Blaty believed there may have been an impairment when claimant first saw Dr. Estivo in 1993, however, he does not state what that impairment may have been. Dr. Blaty further stated that he does not give impairment ratings based upon complaints alone. He cannot say when claimant herniated her disc at C5-6 which was first diagnosed by MRI on June 25, 1993. Accordingly, no specific preexisting impairment percentage has been established. Dr. Stein found claimant has an 8 percent whole body impairment as a result of injuries to her neck and cervical spine. He did not rate the back. The Appeals Board finds Dr. Blaty's opinion to be the most credible evidence of the nature and extent of claimant's disability.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated May 23, 1997, should be, and is hereby, reversed.

Docket Nos. 195,804 & 206,094

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Sharon Andrew, and against the respondent, Beech Aircraft Corporation, a qualified self-insured, for an accidental injury which occurred June 14, 1995, and based upon an average weekly wage of \$638.38 for 45.71 weeks of temporary total disability compensation at the rate of \$319 per week or \$14,581.49, followed by 53.80 weeks at the rate of \$319 per week or \$17,162.20, for a 14% permanent partial general disability, making a total award of \$31,743.69, which is ordered paid in one lump sum minus amounts previously paid.

Future medical benefits may be awarded upon proper application to and approval by the Director.

Unauthorized medical expense up to \$500 is ordered paid to or on behalf of the claimant upon presentation of an itemized statement verifying same.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows:

Barber & Associates	
Transcript of motion hearing	\$141.70
Transcript of preliminary hearing	68.90
Transcript of regular hearing	121.10
 Ireland Court Reporting	
Transcript of preliminary hearing	\$510.65
Transcript of Lawrence R. Blaty, M.D.	219.40

Docket No. 201,444

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Sharon Andrew, and against the respondent, Beech Aircraft Corporation, a qualified self-insured,

for an accidental injury which occurred in December 1994, and based upon an average weekly wage of \$623.25. Claimant is granted a 4% permanent partial general disability for 16.60 weeks at the rate of \$319 per week or \$5,295.40.

Future medical benefits may be awarded upon proper application to and approval by the Director.

Unauthorized medical expense up to \$500 is ordered paid to or on behalf of the claimant upon presentation of an itemized statement verifying same.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows:

Ireland Court Reporting	
Transcript of preliminary hearing	\$150.90
Transcript of motion hearing	123.90

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Dale V. Slape, Wichita, KS  
Jeff C. Spahn, Jr., Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director